

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

FREEMAN ALLAN FELDER,

Petitioner,

v.

BRYAN D. PHILLIPS,

Respondents.

Case No. 2:23-cv-00895-DJC-JDP (HC)

ORDER AND FINDINGS AND  
RECOMMENDATIONS

Petitioner, proceeding without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. He admits, however, that he has not exhausted his claims in state court, and I recommend dismissal on that basis. ECF No. 1 at 7. I will also grant petitioner's application to proceed in forma pauperis. ECF No. 2.

The amended petition is before me for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine the habeas petition and order a response to the petition unless it "plainly appears" that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

Petitioner admits that he did not exhaust his claims by presenting them to the California Supreme Court, but claims that his attorney told him it was unnecessary. ECF No. 1 at 7. That is incorrect. Habeas relief cannot be granted unless the petitioner has given the highest state court a full and fair opportunity to consider his claims. 28 U.S.C. § 2254(b)(1)(A), (c). Accordingly, I

1 will recommend dismissal of this action without prejudice so that petitioner may return to state  
2 court and properly present his claims.

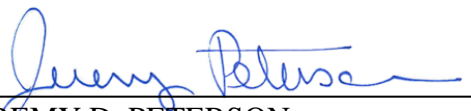
3 Accordingly, it is ORDERED that petitioner's application to proceed in forma pauperis,  
4 ECF No. 2, is GRANTED.

5 Further, it is RECOMMENDED that the petition, ECF No. 1, be DISMISSED for failure  
6 to exhaust administrative remedies.

7 These findings and recommendations are submitted to the United States District Judge  
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days  
9 after being served with these findings and recommendations, any party may file written  
10 objections with the court and serve a copy on all parties. Such a document should be captioned  
11 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the  
12 objections shall be served and filed within fourteen days after service of the objections. The  
13 parties are advised that failure to file objections within the specified time may waive the right to  
14 appeal the District Court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*  
15 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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17 IT IS SO ORDERED.

18 Dated: July 12, 2023

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20 JEREMY D. PETERSON  
21 UNITED STATES MAGISTRATE JUDGE  
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